

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL E. SZLUHA,

Petitioner,

Case No. 3:25-cv-00114-MMD-CLB

DISMISSAL ORDER

v.

TERRY ROYAL, *et al.*,

Respondents.

I. SUMMARY

13 Pro se Petitioner Michael E. Szluha filed a Petition for Writ of Habeas Corpus under
14 28 U.S.C. § 2254 and moved for the appointment of counsel. (ECF Nos. 5 ("Petition"), 1-
15 5 ("Motion").) The Court reviewed the Petition, deferred ruling on the Motion, and
16 instructed Szluha to show cause as to why the Petition should not be dismissed with
17 prejudice as time barred. (ECF No. 6.) Szluha timely responded. (ECF Nos. 7, 8, 9.) For
18 the reasons discussed below, the Court dismisses the Petition and denies the Motion.

II. BACKGROUND¹

20 On July 29, 2014 and July 30, 2015, the state court entered a judgment of
21 conviction and amended judgment of conviction, respectively, following a jury trial,
22 convicting Szluha of six counts of use of a minor in producing pornography, 17 counts of
23 lewdness with a child under the age of 14, and one count of sexual assault with a minor
24 under the age of 14. Szluha was sentenced to life in prison with the possibility of parole
25 after 10 years for every count. Three of those sentences were ordered to be served

1 consecutively, while the remaining sentences were ordered to be served concurrently.
2 Szluha appealed, and the Nevada Supreme Court affirmed on November 13, 2015.

3 On December 20, 2016, Szluha filed a state habeas petition. The state court
4 denied the petition as procedurally barred due to it being untimely filed. Szluha appealed,
5 and the Nevada Court of Appeals affirmed on August 14, 2018. Remittitur issued on
6 September 11, 2018.

7 On April 10, 2018, Szluha filed a second state habeas petition. On May 30, 2019,
8 the state court denied the petition as procedurally barred, but, on October 1, 2019, the
9 state court amended its order by deleting the procedural bar analysis and resolving the
10 petition on the merits. Szluha appealed, and the Nevada Supreme Court found that the
11 state court “erred to the extent it resolved the habeas petition on the merits without
12 addressing the clearly applicable procedural bars.” The Nevada Supreme Court
13 concluded that Szluha’s second state habeas petition was procedurally barred and
14 without good cause, so it affirmed the state court order denying the petition. Remittitur
15 issued on December 21, 2020.

16 **III. LEGAL STANDARD**

17 The Antiterrorism and Effective Death Penalty Act (“AEDPA”) establishes a one-
18 year period of limitations for state prisoners to file a federal habeas petition under 28
19 U.S.C. § 2254. The one-year limitation period begins to run from the latest of four possible
20 triggering dates, with the most common being the date on which the petitioner’s judgment
21 of conviction became final by either the conclusion of direct appellate review or the
22 expiration of the time for seeking such review. See 28 U.S.C. § 2244(d)(1)(A). For a
23 Nevada prisoner pursuing a direct appeal, a conviction becomes final when the 90-day
24 period for filing a petition for certiorari in the Supreme Court of the United States expires
25 after a Nevada appellate court has entered judgment or after the Nevada Supreme Court
26 has denied discretionary review. See *Harris v. Carter*, 515 F.3d 1051, 1053 n.1 (9th Cir.
27 2008); *Shannon v. Newland*, 410 F.3d 1083, 1086 (9th Cir. 2005); Sup. Ct. R. 13. The
28 federal limitations period is tolled while “a properly filed application for State post-

1 conviction or other collateral review with respect to the pertinent judgment or claim is
2 pending." 28 U.S.C. § 2244(d)(2). But no statutory tolling is allowed for the period between
3 finality of a direct appeal and the filing of a petition for post-conviction relief in state court
4 because no state court proceeding is pending during that time. See *Nino v. Galaza*, 183
5 F.3d 1003, 1006-07 (9th Cir. 1999); *Rasberry v. Garcia*, 448 F.3d 1150, 1153 n.1 (9th Cir.
6 2006).

7 **IV. DISCUSSION**

8 Szluha's direct appellate review concluded on November 13, 2015 with the Nevada
9 Supreme Court's affirmation of his judgment of conviction. As such, Szluha's conviction
10 became final when the time expired for filing a petition for writ of certiorari with the United
11 States Supreme Court 90 days later, on February 11, 2016. The federal statute of
12 limitations began to run the following day: February 12, 2016. The limitations period
13 expired 365 days later, on February 12, 2017, making his instant Petition, which was
14 transmitted to the Court on or about February 25, 2025, untimely by eight years.

15 Notably, Szluha is not entitled to any statutory tolling stemming from his state
16 postconviction proceedings. Szluha filed first and second state habeas petitions, but they
17 would only toll the federal limitations period if they were "properly filed." The Supreme
18 Court has held that if a habeas petitioner's state post-conviction petition was rejected by
19 the state court as untimely, it is not "properly filed" within the meaning of the statutory
20 tolling provision of the AEDPA limitations period. See *Pace v. DiGuglielmo*, 544 U.S. 408,
21 417 (2005) ("Because the state court rejected petitioner's PCRA petition as untimely, it
22 was not 'properly filed,' and he is not entitled to statutory tolling under § 2244(d)(2)."); see
23 also *Artuz v. Bennett*, 531 U.S. 4, 8 (2000) ("[A]n application is 'properly filed' when its
24 delivery and acceptance are in compliance with the applicable laws and rules governing
25 filings. These usually prescribe, for example, the form of the document, the time limits
26 upon its delivery, the court and office in which it must be lodged, and the requisite filing
27 fee."). Szluha's first and second state habeas petitions were not properly filed given that
28 they were found to be untimely under state procedural rules.

1 In response to the Order to Show Cause, Szluha does not dispute the Court's
2 calculation of his AEDPA limitations period. Rather, Szluha contends that he is entitled to
3 equitable tolling due to: (1) his state habeas attorney abandoning him, which can be seen
4 by his state habeas attorney's admission that the late filing of Szluha's first state habeas
5 petition was his fault; (2) not receiving confirmation of the affirmation of the denial of his
6 second state habeas petition until March 19, 2021, when the Nevada Supreme Court sent
7 him copies of requested documents; (3) speaking with his state habeas attorney on the
8 phone on May 18, 2021 and being informed "that no one in the courts of Nevada would
9 help [him] and that [he] was going to die in prison" and that he could "give [the federal
10 courts] a try[;]" (4) his state habeas attorney failing to inform him of the need to file a
11 protective federal habeas petition after his first state habeas petition was denied and then
12 erroneously telling him that there were no time limitations to file his federal habeas
13 petition; (5) needing time to recover after the May 18, 2021 phone call with his state
14 habeas attorney due to giving "up hope of . . . ever getting his liberty back[;]" (6) spending
15 a few months putting together information about his case and then sending that
16 information to the Mayor of North Las Vegas, "Fair Trials" (a human rights organization),
17 the British Consulate, and other "officials in England[;]" (7) applying for a pardon through
18 the Pardons Board, (8) it being "nearly impossible" to make legal phone calls in prison
19 due to "other inmates . . . steal[ing] or break[ing] the cordless phone, hold[ing] the phone
20 hostage or steal[ing] batteries[;]" and (9) receiving "subpar treatment from prison staff due
21 to [his] sex offender status." (ECF Nos. 7, 8.)

22 **A. Equitable Tolling Standard**

23 The Supreme Court has held that AEDPA's statute of limitations "is subject to
24 equitable tolling in appropriate cases." *Holland v. Florida*, 560 U.S. 631, 645 (2010).
25 However, equitable tolling is appropriate only if (1) a petitioner has been pursuing his
26 rights diligently, and (2) some extraordinary circumstance stood in his way and prevented
27 timely filing. See *id.* at 649. To satisfy the first element, a petitioner "must show that he
28 has been reasonably diligent in pursuing his rights not only while an impediment to filing

1 caused by an extraordinary circumstance existed, but before and after as well, up to the
 2 time of filing.” *Smith v. Davis*, 953 F.3d 582, 598-99 (9th Cir. 2020) (en banc) (expressly
 3 rejecting stop-clock approach for evaluating when petitioner must be diligent). To satisfy
 4 the second element, a petitioner must show that the “extraordinary circumstances” were
 5 the *cause* of his untimeliness. See, e.g., *Grant v. Swarthout*, 862 F.3d 914, 926 (9th Cir.
 6 2017). In other words, a petitioner must show “that some external force caused his
 7 untimeliness, rather than mere oversight, miscalculation or negligence.” *Velasquez v.
 8 Kirkland*, 639 F.3d 964, 969 (9th Cir. 2011) (internal quotation omitted).

9 B. Analysis of Equitable Tolling Arguments

10 The Court finds that Szluha is entitled to equitable tolling up until March 19, 2021
 11 when he received copies from the Nevada Supreme Court of the affirmation of the denial
 12 of his second state habeas petition. See *Fue v. Biter*, 842 F.3d 650, 652 (9th Cir. 2016)
 13 (holding that a petitioner’s lack of knowledge of a state court’s adverse decision on his
 14 post-conviction appeal or habeas petition, if proven, would entitle him to equitable
 15 tolling). Up until this time, taking Szluha’s allegations as true, Szluha’s state habeas
 16 attorney had: (1) filed Szluha’s first state habeas petition late because he was busy
 17 working on an unrelated death penalty case; (2) failed to inform Szluha of the need to file
 18 his federal habeas petition so that such petition would be timely; (3) filed a baseless
 19 second state habeas petition; and (4) failed to provide copies to him of the Nevada
 20 Supreme Court’s decision. Given that Szluha’s state habeas attorney failed to fulfil his
 21 basic duty of client representation, the Court finds that Szluha’s state habeas attorney’s
 22 conduct was sufficiently egregious to warrant equitable tolling.² See *Doe v. Busby*, 661

24 ²Notably, Szluha’s state habeas attorney’s failure to adequately advise him
 25 regarding his AEDPA filing deadline amounts to ordinary attorney negligence and does
 26 not warrant equitable tolling. See *Frye v. Hickman*, 273 F.3d 1144, 1146 (9th Cir. 2001)
 27 (“We conclude that the miscalculation of the limitations period by Frye’s counsel . . . do[es]
 28 not constitute extraordinary circumstances sufficient to warrant equitable tolling.”). Similarly, equitable tolling is not warranted due to Szluha’s “inability correctly to calculate the limitations period” himself. *Rasberry*, 448 F.3d at 1154 (holding that “a pro se petitioner’s lack of legal sophistication is not, by itself, an extraordinary circumstance warranting equitable tolling”).

1 F.3d 1001, 1011 (9th Cir. 2011) (“Equitable tolling may be warranted in instances of
 2 unprofessional attorney behavior.”); see also *Luna v. Kernan*, 784 F.3d 640, 647 (9th Cir.
 3 2015) (“[A]ffirmatively misleading a petitioner to believe that a timely petition has been or
 4 will soon be filed can constitute egregious professional misconduct.”); cf. *Holland*, 560
 5 U.S. at 651-52 (“A garden variety claim of excusable neglect . . . does not warrant
 6 equitable tolling.”).

7 However, importantly, Szluha fails to make a meritorious argument for why he
 8 should be entitled to equitable tolling after March 19, 2021. For almost four years—from
 9 March 19, 2021 until February 25, 2025 when his federal habeas petition was finally
 10 filed—Szluha explains that he lacked adequate access to the phone and was treated
 11 unfairly by prison staff. While the Court acknowledges and appreciates that prison
 12 conditions can make filing a federal habeas petition tricky, the conditions highlighted by
 13 Szluha—either considered individually or collectively—are ordinary conditions of prison
 14 life and do not qualify as extraordinary circumstances warranting equitable tolling. See
 15 *Ramirez v. Yates*, 571 F.3d 993, 998 (9th Cir. 2009) (explaining that “[o]rdinary prison
 16 limitations” are “neither ‘extraordinary’ nor ma[k]e it ‘impossible’ for [a prisoner] to file his
 17 petition in a timely manner”). Turning to diligence during this time period, Szluha explains
 18 that was seeking assistance from non-court related entities and seeking a pardon. The
 19 correlation between pursuing these other avenues of relief and Szluha’s alleged diligence
 20 in pursing federal habeas relief is unclear. There was nothing preventing Szluha from
 21 simultaneously seeking various forms of relief.

22 Finally, Szluha’s federal statute of limitations was equitably tolled until March 19,
 23 2021.³ Szluha’s limitations period began to run the following day—March 20, 2021—and
 24 expired one year later, on March 20, 2022. Szluha filed his instant Petition on February
 25

26
 27 ³Under this analysis, the Court assumes that Szluha expeditiously secured counsel
 28 to file his state habeas petition following his direct appeal, meaning he did not lose any
 time from his AEDPA clock between the conclusion of his direct appeal proceedings and
 the commencement of equitable tolling.

1 25, 2025, almost four years *after* his limitations period expired. Accordingly, the Court
2 dismisses the Petition with prejudice as untimely.

3 **V. CONCLUSION**

4 It is therefore ordered that the Petition for Writ of Habeas Corpus under 28 U.S.C.
5 § 2254 (ECF No. 5) is dismissed with prejudice as untimely.

6 It is further ordered that the motion for appointment of counsel (ECF No. 1-5) is
7 denied.

8 It is further ordered that a Certificate of Appealability is denied, as jurists of reason
9 would not find dismissal of the Petition for the reasons stated herein to be debatable or
10 wrong.

11 It is further ordered that the Clerk of Court kindly: (1) add Nevada Attorney General
12 Aaron D. Ford as counsel for Respondents;⁴ (2) informally serve the Nevada Attorney
13 General with the Petition (ECF No. 5), this Order, and all other filings in this matter by
14 sending notices of electronic filing to the Nevada Attorney General's office; (3) enter final
15 judgment, dismissing this action with prejudice; and (4) close this case.

16 DATED THIS 23rd Day of May 2025.

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18 MIRANDA M. DU
19 UNITED STATES DISTRICT JUDGE
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⁴No response is required from Respondents other than to respond to any orders of a reviewing court.